

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

PALANTIR TECHNOLOGIES INC.,

Plaintiff,

v.

MARC L. ABRAMOWITZ,

Defendant.

Case No. 19-cv-06879-BLF

ORDER ON MOTIONS IN LIMINE

[Re: ECF No. 356-63, 365, 366]

In preparation for trial the Court held the Final Pretrial Conference in this case on October 13, 2022, during which the Court issued oral rulings on the parties' motions *in limine*. *See* Motions, ECF Nos. 356-63, 365, 366. The Court's rulings on the parties' motions *in limine* are set forth as follows.

I. PLAINTIFF'S MOTIONS IN LIMINE

A. Plaintiff's Motion in Limine No. 1 to Exclude Evidence Regarding the i2 Litigation

Palantir seeks to exclude evidence regarding *i2, Inc. et al v. Palantir Technologies, Inc.*, No. 1:10-cv-0085-LO-JFA (E.D. Va.) (the "i2 Litigation"), in which i2 Inc. sued Palantir for, among other things, trade secret misappropriation and breach of contract. *See* Pl.'s MIL No. 1, at 1, ECF No. 361. Palantir argues that evidence or argument pertaining to the i2 Litigation should be excluded from trial under Federal Rule of Evidence 403 because it is irrelevant and will cause Palantir unfair prejudice. *Id.* at 1-3. Palantir contends that the litigation is irrelevant because it has no connection to Abramowitz or Palantir's allegations against Abramowitz. *Id.* at 2. Palantir contends that the litigation would unduly prejudice Palantir because the jury may seek to punish Palantir by meriting unsubstantiated allegations against the company and would force Palantir to

1 waste trial time rebutting the allegations in the i2 Litigation. *Id.* at 3.

2 Abramowitz responds that evidence regarding the i2 Litigation is admissible under Rule
3 403. Def.'s Opp'n MIL 1, ECF No. 379. Abramowitz argues that the i2 Litigation is relevant
4 because it implicates the credibility of Palantir's Chief Operating Officer Shyam Sankar—a
5 "critical witness in this case" who allegedly divulged to Abramowitz Palantir's purported trade
6 secrets concerning "Cyber Technology" during an in-person meeting in June 2014. *Id.* at 1-4.
7 Abramowitz contends that settlement of the i2 Litigation is probative of bias in Sankar's testimony
8 because Palantir settled the matter on behalf of itself, Sankar, and Sankar's father. *Id.* at 1-3.
9 Abramowitz further argues that the evidence the of the litigation is probative of Sankar's
10 dishonesty because, at some point after the litigation, Sankar solicited Abramowitz for help getting
11 his father a job without telling Abramowitz about the allegations against his father. *Id.* at 3.
12 Abramowitz concedes that presenting evidence of the i2 Litigation at trial will prejudice Palantir
13 but that such prejudice is not undue. *Id.* at 4. Abramowitz contends that the jury will not draw
14 unfair inferences and Palantir will not have to spend time rebutting the allegations from the
15 i2 Litigation because Sankar has already admitted the facts Abramowitz seeks to present. *Id.* at 4.

16 The Court has considered the evidence under Federal Rule of Evidence 403. The Court
17 agrees with Abramowitz that aspects of the i2 Litigation, including Palantir's settlement of the
18 matter on his behalf, are probative of Mr. Sankar's credibility and bias. The Court finds that, as to
19 Mr. Sankar, evidence about the litigation is unlikely to lead to minitrials, as he has admitted the
20 relevant conduct in deposition. *See* Def.'s Opp'n MIL 1, Ex. B, ECF No. 378-4. The Court also
21 finds that any unfair prejudice that could arise from discussion of the i2 Litigation can be
22 mitigated with a limiting instruction. Weighing these considerations, the Court finds that the
23 relevance of certain aspects of the i2 Litigation to Mr. Sankar's credibility and bias is not
24 substantially outweighed by the danger unfair prejudice, confusing the issues, misleading the jury,
25 undue delay, wasting time, or needlessly presenting cumulative evidence. *See* Fed. R. Evid. 403.
26 Palantir's motion is therefore DENIED, but the Court will allow a limiting instruction that
27 information concerning the i2 Litigation may be used solely to assess Mr. Sankar's bias or
28 credibility as a witness.

B. Plaintiff's Motion in Limine No. 2 to Exclude Evidence Regarding Non-Operative Trade Secret Disclosures

Palantir seeks to exclude evidence regarding non-operative trade secret disclosures under Federal Rule of Evidence 403. *See* Pl.'s MIL No. 2, ECF No. 362. Palantir argues that this evidence is not relevant. *Id.* at 3-5. Palantir also argues that its presentation will cause unfair prejudice because it will lead the jury to draw prejudicial inferences about Palantir's reasons for submitting multiple trade secret disclosures and distract the jury from the relevant disclosures. *Id.* at 4-5. Abramowitz responds that the non-operative trade secret disclosures are relevant because they are probative of the integrity of Palantir's claims. Def.'s Opp'n MIL No. 2, at 1, ECF No. 381. Abramowitz concedes that this evidence is prejudicial to Palantir but contends that any such prejudice is not unfair. *Id.* at 5.

The Court has considered the evidence under Federal Rule of Evidence 403. The Court finds that the superseded trade secret disclosures have little to no relevance. They are documents created for litigation to serve as a gateway to initiating discovery. *See* Cal. Code Civ. P. § 2019.210; *see also Advanced Modular Sputtering, Inc. v. Superior Ct.*, 132 Cal. App. 4th 826, 833-34 (2005) (describing purposes of trade secret disclosures). Furthermore, they are not relevant to the credibility of any representation by Palantir that it owned the alleged trade secrets at the time of the alleged misappropriation, as the disclosures were created after any accused conduct. *See BladeRoom Grp. Ltd. v. Facebook, Inc.*, No. 5:15-CV-01370-EJD, 2018 WL 1569703, at *1 (N.D. Cal. Mar. 30, 2018). The Court further finds that presentation of the superseded trade secret disclosures will waste time, as they will require extensive explanation as to why and how they were created and why they were later modified, and even with this explanation may confuse the jury. Weighing these considerations, the Court finds that any probative value of the non-operative trade secret disclosures is substantially outweighed by a danger of confusing the issues, misleading the jury, undue delay, and wasting time. Palantir's motion is therefore GRANTED.

C. Plaintiff's Motion in Limine No. 3 to Exclude Evidence of Palantir's Motive for Filing Lawsuit and Delaware Litigation

Palantir seeks to preclude Abramowitz from offering evidence regarding *KT4 Partners*

1 *LLC v. Palantir Technologies Inc.*, No. N17C-12-212 EMD CCLD (Del. Sup. Ct.) (the “Delaware
2 Litigation”), a settled case in which Abramowitz sued Palantir. *See* Pl.’s MIL No. 3, ECF No.
3 363. Palantir argues that the evidence should be excluded under Federal Rules of Evidence 402
4 and 403. *See id.* at 1, 3, 5. Palantir argues that any such evidence is irrelevant, will force Palantir
5 to spend time defending itself against the allegations in the Delaware Litigation, lead to jury
6 confusion, and cause Palantir unfair prejudice. *Id.* at 3-5.

7 Abramowitz responds that he seeks to present evidence related to the Delaware Litigation
8 to show Palantir’s motive for bringing this litigation, to refute Palantir’s claim that it acted
9 diligently to protect its intellectual property as required to prevail on a CUTSA claim, and to show
10 witness bias. *See* Def.’s Opp’n MIL No. 3, at 1, ECF No. 384. Abramowitz argues that this
11 evidence is relevant because it shows that Palantir declined to protect its purported trade secrets
12 until after Abramowitz initiated the Delaware Litigation. *Id.* at 3. According to Abramowitz, this
13 shows that Palantir never believed that the alleged trade secrets Abramowitz allegedly
14 misappropriated were in fact trade secrets. *Id.* Abramowitz also argues that the evidence is
15 relevant to show that Palantir’s witnesses are biased against him for trying to hold Palantir to
16 account for its alleged misconduct. *Id.* at 4. Finally, Abramowitz argues that this evidence will
17 not result in mini-trials or delay because the existence of the Delaware Litigation complaint and
18 the agreement upon which it is based are undisputed. *Id.* at 5.

19 The Court has considered the evidence under Federal Rules of Evidence 402 and 403.
20 Motive to sue is irrelevant to any issue in this case. The Court therefore finds that evidence about
21 the Delaware Litigation is inadmissible under Rules 402 and 403 for the purpose of showing
22 Palantir’s motive for bringing this litigation.

23 However, the Court finds that evidence concerning the Delaware Litigation is relevant to
24 Abramowitz’s contention that Palantir delayed in protecting its trade secrets and to potential
25 witness bias. The Court further finds that testimony on this matter limited to these relevant topics
26 will not cause delay or unfair prejudice. Weighing these considerations, the Court finds that the
27 probative value of evidence concerning the Delaware Litigation, as it relates to Palantir’s diligence
28 in protecting its trade secrets and potential witness bias, is not substantially outweighed by the

1 danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or
2 needlessly presenting cumulative evidence.

3 Palantir's motion is therefore DENIED, but the Court will limit the presentation of
4 evidence regarding the Delaware Litigation to evidence concerning Palantir's diligence in
5 protecting its trade secrets and potential witness bias. The Court will not permit the parties to
6 present evidence of the Delaware Litigation to show Palantir's motive for bringing this action.
7 The Court will address the admissibility of exhibits related to the Delaware Litigation as they are
8 presented at trial; however, the excessively long list of documents listed in the motion would not
9 appear to serve the interests of efficient use of the jury's time.

10 **D. Plaintiff's Motion in Limine No. 4 to Exclude Hearsay Statements from**
11 **Defendant's Patent Counsel**

12 Palantir seeks to exclude email conversations between Abramowitz's patent counsel. *See*
13 Pl.'s MIL No. 4, ECF No. 365. Palantir argues that these communications are hearsay and
14 therefore inadmissible. *Id.* at 5. Def.'s Opp'n MIL No. 4, ECF No. 387. Abramowitz argues that
15 the communications are not hearsay because they are not being offered for the truth for the matter
16 asserted; are being offered to show effect on the listener; and are being offered as prior consistent
17 statements. *Id.* at 2-3. Abramowitz further argues that even if the Court finds that the
18 communications are hearsay, they are admissible under the then-existing-state-of-mind exception.
19 *Id.* at 3.

20 The Court DEFERS its ruling on Palantir's motion. The Court will assess the admissibility
21 of the email conversations between Abramowitz's patent counsel as they are offered at trial,
22 considering the context in which they are offered. However, to date Abramowitz has not
23 suggested a viable non-hearsay purpose for admitting the emails. The Court will maintain an open
24 mind to admissibility at trial.

25 **E. Plaintiff's Motion in Limine No. 5 to Exclude Testimony from Undisclosed**
26 **Witnesses**

27 Palantir seeks to preclude the testimony of David Lawrence under Federal Rule of Civil
28 Procedure 37(c)(1). *See* Pl.'s MIL No. 5, ECF No. 366. Palantir contends that Abramowitz failed
to adequately disclose Mr. Lawrence under Federal Rule of Civil Procedure 26(a). *Id.* at 2.

Palantir asserts that this failure was not substantially justified because Abramowitz has known about Mr. Lawrence purported relevance since the outset of the case. *Id.* at 4. Palantir further asserts that it would be harmed if Mr. Lawrence were permitted testify because Abramowitz's failure to disclose him deprived Palantir of the opportunity to seek his deposition and take other relevant discovery. *Id.* at 4.

Abramowitz responds to each of Palantir's arguments. *See* Def.'s Opp'n MIL No. 5, ECF No. 389. Abramowitz argues that Mr. Lawrence was adequately disclosed in discovery, as Palantir itself disclosed him in its discovery responses as a person who may have received access to Palantir's trade secrets; Palantir asked about Mr. Lawrence during depositions of Abramowitz and his patent attorneys; and Mr. Lawrences name was listed in produced documents. *Id.* at 2-3. Abramowitz also argues that any late disclosure was harmless because Palantir knew about Mr. Lawrence. *Id.* at 4.

The Court finds that Abramowitz did not adequately disclose Mr. Lawrence to satisfy its Rule 26 obligations and that Palantir would be harmed if Mr. Lawrence were permitted to testify without recourse to other remedial measures. In the event of a party's failure to adequately disclose a witness, the Court may to impose appropriate sanctions. Fed. R. Civ. P. 37(c)(1). Here, the Court finds that the proper remedy is to give Palantir an opportunity depose Mr. Lawrence to cure the harm of his late disclosure. Palantir's motion to exclude Mr. Lawrence's testimony is therefore DENIED, but Abramowitz must make Mr. Lawrence available for deposition before trial.

II. DEFENDANT'S MOTIONS IN LIMINE

A. Defendant's Motion in Limine No. 1 to Exclude Evidence and Argument About Reasonable Royalty from the Jury

Abramowitz seeks to exclude evidence and argument about reasonable royalty from the jury. *See* Def.'s MIL No. 1, ECF No. 356. Abramowitz argues that such evidence is irrelevant and therefore inadmissible to the jury because the plain language of CUTSA reserves for the court the award of a reasonable royalty. *Id.* Palantir responds that because the action is in federal court, the Seventh Amendment controls whether reasonable royalty is decided by the jury. *See* Pl.'s

1 Opp'n MIL No. 1, ECF No. 383. Palantir contends that the Seventh Amendment guarantees trade
2 secret litigants in federal court the opportunity to present reasonable royalty to a jury. *Id.* at 2.

3 The Court agrees with Palantir that the Seventh Amendment guarantees trade secret
4 litigants in federal court the right to present reasonable royalty to a jury. Under a plain-text
5 reading of CUTSA, the award of a "reasonable royalty" is determined by the court, not the jury.
6 *See* Cal. Civ. Code § 3426.3(b). But in federal court, state prohibitions on jury trials are irrelevant
7 because federal law and the Seventh Amendment control. *See Simler v. Conner*, 372 U.S. 221,
8 222 (1963) ("[T]he right to a jury trial in the federal courts is to be determined as a matter of
9 federal law in diversity as well as other actions."). To determine whether the Seventh Amendment
10 preserves the right to a jury trial on a given action, a court first compares the action to those 18th-
11 century actions brought in the courts of England prior to the merger of the courts of law and equity
12 and then examines the remedy sought to determine whether it is legal or equitable in nature.
13 *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 41-42 (1989).

14 As to the first step, the Court finds that a CUTSA trade secret action is most analogous to
15 an action that would have been brought at common law. The Court is persuaded by the historical
16 review in *De Lage Landen Operational Services, LLC v. Third Pillar Systems, LLC*, which
17 identified the earliest recorded trade secret action in the United States or England as occurring in
18 1817. No. CIV.A. 09-2439, 2011 WL 1627899, at *3 (E.D. Pa. Apr. 28, 2011) (identifying
19 *Newberry v. James*, 35 Eng. Rep. 1011 (Ch. 1817)). The Court therefore looks to analogous
20 actions to determine whether they would have been brought before a court of law or equity in
21 1791.

22 The Court finds persuasive the Federal Circuit's conclusion that "[f]or Seventh
23 Amendment purposes, claims for patent, copyright, or trademark infringement are appropriate
24 analogues of the trade secret claim here." *Texas Advanced Optoelectronic Sols., Inc. v. Renesas*
25 *Elecs. Am., Inc.*, 895 F.3d 1304, 1325 (Fed. Cir. 2018). Patent infringement actions were tried at
26 law in the 18th century. *See Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 377 (1996) as
27 were copyright actions for damages, *see Feltner v. Columbia Pictures Television, Inc.*, 523 U.S.
28 340, 351 (1998). Accordingly, the Court finds that the first step of the Seventh Amendment

1 analysis suggests a trade secret claim should be presented to a jury. The Court notes, however,
2 that the issue here is whether a party has a right to a decision by a jury on a particular remedy for
3 trade secret misappropriation. As remedy is the focus of the second step of the analysis, the Court
4 turns to that step noting that it carries additional weight.

5 At the second step of the Seventh Amendment analysis, a court examines the remedy
6 sought to determine whether it is legal or equitable in nature. *Granfinanciera*, 492 U.S. at 41-42.
7 This stage of this analysis is more important than the first. *Id.* The Court agrees with the Federal
8 Circuit, which has explained that reasonable royalty is “not restitutional in nature,” but “simply
9 money damages awarded in an action at law.” *Injection Rsch. Specialists, Inc. v. Polaris Indus.,*
10 *L.P.*, No. 97-1516, 1998 WL 536585, at *15 (Fed. Cir. 1998). The Supreme Court has
11 “recognized the ‘general rule’ that monetary relief is legal.” *Feltner*, 523 U.S. 340 at 352. The
12 Court therefore finds that the second step of the analysis further weighs in favor of finding that a
13 party has a right to have a jury decide reasonable royalty. Accordingly, the Court finds that the
14 Seventh Amendment guarantees federal litigants the right to a jury determination of reasonable
15 royalties under the CUTSA. The Court’s conclusion is consistent with the Court’s holding in *De*
16 *Lage*, 2011 WL 1627899, a CUTSA case arising in the Eastern District of Pennsylvania that
17 confronted same issue. Abramowitz’s motion is therefore DENIED.

18 The Court notes that at oral argument on this matter Abramowitz raised an argument not
19 raised in its briefing. Under CUTSA the award of reasonable royalty is available only if neither
20 damages nor unjust enrichment are provable. *Cacique, Inc. v. Robert Reiser & Co.*, 169 F.3d 619,
21 623 (9th Cir. 1999). According to Abramowitz, evidence supporting reasonable royalty therefore
22 may never become relevant if damages or unjust enrichment are provable.

23 As the Court explained at the oral argument, it is sympathetic to Abramowitz’s concern
24 that evidence related to reasonable royalty may never become relevant. The Court is also
25 concerned that the presentation of such evidence may be confusing to the jury or may result in the
26 jury mistakenly awarding a reasonable royalty when damages or unjust enrichment are provable.
27 The Court is therefore inclined to allow the presentation of evidence concerning reasonable
28 royalty at trial only if the jury finds that neither damages nor unjust enrichment are provable. The

1 Court is further inclined to require that the parties announce the time they are reserving for this
 2 issue before the trial. The parties should be prepared to discuss this proposal and their proposed
 3 time allotments at the scheduling conference set for November 18, 2022.

4 **B. Defendant’s Motion in Limine No. 2 to Exclude Evidence and Argument About**
 5 **Damages from Breach of Contract**

6 In its briefing, Abramowitz moved to preclude Palantir “from introducing at trial any
 7 evidence or argument related to damages for its contract claim.” Def.’s MIL No. 2, at 1, ECF No.
 8 357. Abramowitz argued that Palantir failed to comply with its obligations under Federal Rule of
 9 Civil Procedure 26(a)(1)(iii) to produce computations of each category of damages claimed and
 10 make available the evidentiary material on which the computations are based. *Id.* In response
 11 Palantir identified the damages theory it disclosed in its initial disclosures and throughout the
 12 litigation and noted that it disclosed bills in support of that theory. Pl.’s Opp’n MIL No. 2, at 3-4,
 13 ECF No. 385.

14 During oral argument Abramowitz did not dispute that Palantir had adequately disclosed a
 15 damages theory for its breach of contract claim. Abramowitz instead modified its request by
 16 asking that the Court exclude other theories that Palantir identified in its initial disclosures but,
 17 according to Abramowitz, did not adequately disclose in its interrogatory responses or expert
 18 discovery. *Id.*

19 The Court finds that Palantir adequately disclosed the contract damages theory it identified
 20 in its briefing. This is sufficient to deny Abramowitz’s overbroad motion requesting that Palantir
 21 be precluded from offering “any evidence or argument related to damages for its contract claim.”
 22 The Court declines to consider Abramowitz’s alternative request—raised for the first time at oral
 23 argument—that Palantir be excluded from presenting evidence or argument on other contract
 24 damages theories, as this issue was not briefed and Palantir did not have an adequate opportunity
 25 to respond. *See, e.g., Makaeff v. Trump Univ., LLC*, 2014 WL 2743244, at *4 n.2 (S.D. Cal. June
 26 17, 2014) (“the Court need not consider issues raised for the first time during oral argument”).
 27 Accordingly, Abramowitz’s motion is DENIED.
 28

1 **C. Defendant’s Motion in Limine No. 3 to Exclude References to German Litigation**
 2 **Between Palantir and Mr. Abramowitz**

3 Abramowitz requests that the Court preclude Palantir from referencing the German litigation
 4 between Palantir and Abramowitz (“German Litigation”) “in any way.” Def.’s MIL No. 3, ECF No.
 5 358. Abramowitz contends that any reference to the German Litigation would be irrelevant and
 6 unfairly prejudicial and therefore should be excluded under Federal Rules of Evidence 402 and 403.
 7 *Id.* at 3-5. Abramowitz also contends that any references to the German litigation are inadmissible
 8 hearsay. *Id.* at 5. Palantir argues that Abramowitz’s motion is overbroad and that the Court should
 9 consider objections to specific evidence on an item-by-item basis. Pl.’s Opp’n MIL No. 3, at 1, ECF
 10 No. 386. Palantir also identifies certain aspects of the German Litigation that it argues are admissible.
 11 *Id.* For example, Palantir notes that the German Litigation concerns the same subject matter and
 12 parties as the present litigation, and therefore Abramowitz’s statements in the German Litigation may
 13 contain relevant party admissions. *Id.* at 3. Palantir also argues that the existence of a German
 14 criminal investigation arising from Abramowitz’s submissions in the German Litigation is relevant to
 15 Abramowitz’s credibility, as it may cause him to tailor his testimony to avoid prosecution. *Id.* at 4-5.

16 The Court finds that Abramowitz’s motion is overbroad. For example, to the extent
 17 Abramowitz has made statements in the German Litigation, those statements would likely be
 18 admissible if offered by Palantir as opposing party’s statements. Fed. R. Evid. 801(d)(2).
 19 Accordingly, Abramowitz’s motion is DENIED. The Court will consider the admissibility of
 20 evidence related to the German Litigation as it is offered at trial.

21 The Court notes, however, that it will exclude any mention of the German criminal
 22 proceedings. The criminal proceedings remain ongoing, and the jury likely will have little
 23 understanding of the German criminal system. Reference to the existence of the German criminal
 24 proceedings may unfairly prejudice Abramowitz by causing the jury to improperly infer that
 25 Abramowitz has committed the wrongdoing alleged in the present litigation. *See United States v.*
 26 *Hankey*, 203 F.3d 1160, 1172 (9th Cir. 2000) (“unfair prejudice means ‘undue tendency to suggest
 27 decision on an improper basis, commonly, though not necessarily, an emotional one.’” (quoting
 28 Fed. R. Evid. 403 advisory committee’s note to 1972 proposed rules)). While the Court agrees
 with Palantir that certain aspects of the German criminal case may be probative of Abramowitz’s

credibility, the Court finds that this probative value is substantially outweighed by the danger of unfair prejudice. *See* Fed. R. Evid. 403.

D. Defendant's Motion in Limine No. 4 to Exclude Evidence and Argument About Mr. Abramowitz's Wealth from the Jury

Abramowitz seeks to preclude Palantir from offering evidence regarding his wealth under Federal Rules of Evidence 401, 402, and 403. Def.'s MIL No. 4, ECF No. 359. Abramowitz first contends that any such evidence is irrelevant to the issues in the case and its admission would unfairly prejudice him. *Id.* at 1-2. Abramowitz then concedes that wealth may be relevant to assessing punitive damages but argues that such evidence should be presented to the Court in a subsequent proceeding only if the jury finds that he acted willfully and maliciously. *Id.* at 2.

Palantir argues that evidence of Abramowitz's wealth should not be excluded for three reasons: (1) it is probative of Abramowitz's ability to commercialize the alleged trade secrets and therefore pay a reasonable royalty to license the alleged trade secrets; (2) it is relevant to punitive damages, which must be presented to a jury under the Seventh Amendment; and (3) Abramowitz's ownership interest in Palantir is probative of whether Palantir adequately protected its trade secrets when it shared them with Abramowitz. Pl.'s Opp'n MIL No. 4, at 1, ECF No. 388.

The Court finds that evidence of Abramowitz's wealth is admissible because it is relevant to and highly probative of the reasonable royalty analysis, circumstances under which Palantir entrusted Abramowitz with its confidential information, and exemplary damages. Admission of this evidence does not create a danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence. *See* Fed. R. Evid. 403.

In regard to punitive damages, under CUTSA, "[i]f willful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice any award made under [certain other provisions]." Cal. Civ. Code § 3426.3. Although the statute reserves for "the court" the option of awarding exemplary damages, courts have repeatedly held that the Seventh Amendment guarantees litigants in federal court the right to a jury determination of exemplary damages. *See Trandes Corp., v. Guy F. Atkinson Co.*, 996 F.2d 655, 666 (4th Cir. 1992)

(affirming district court’s submission of punitive damages to jury, even though state’s trade secrets statute reserved punitive damages award for the court); *see also Cap. Sols., LLC v. Konica Minolta Bus. Sols. U.S.A., Inc.*, 695 F. Supp. 2d 1149, 1154 (D. Kan. 2010) (“[A]n award of punitive damages, including the amount of the award, has traditionally been a task for the jury; thus, under the required Seventh Amendment historical analysis, the right to a jury attaches not only to the issue of a plaintiff’s entitlement to punitive damages, but also to the amount of such damages.”) The Court therefore finds that evidence of Abramowitz’s wealth is admissible and should be presented to the jury. And as for the issue of whether proof of punitive damages should be separately presented to the jury after liability is established, the parties expressly agreed that “bifurcation or separate trials of specific issues is neither feasible nor desired.” Joint Pre-Trial Statement 18, ECF No. 364. Accordingly, Mr. Abramowitz’s motion is DENIED.

E. Defendant’s Motion in Limine No. 5 to Exclude Palantir’s Second Amended Trade Secret Disclosure

Abramowitz moves to exclude the admission of Palantir’s Second Amended Trade Secret Disclosure (the “Disclosure”) under Rules 403, 703, and 802 of the Federal Rules of Evidence. Def.’s MIL No. 5, ECF No. 360. Abramowitz argues that the Disclosure is inadmissible hearsay, is unfairly prejudicial, and creates a risk of jury confusion about what information Abramowitz had at the time of the alleged trade secret misappropriation. *Id.* at 2-3. Palantir does not oppose Abramowitz’s motion, so long as the Court excludes the admission of earlier iterations of the trade secret disclosures as Palantir requested in its Motion in Limine No. 2. *See* Pl.’s Opp’n MIL No. 5, ECF No. 390.

The Court’s analysis regarding the non-operative trade secret disclosures, discussed above in reference to Plaintiff’s Motion in Limine No. 2, applies with equal force to the Disclosure. And having excluded the superseded disclosure, Palantir does not object. The Disclosure is therefore inadmissible. Abramowitz’s motion GRANTED.

//

//

//

III. ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that:

- Plaintiff's Motion in Limine No. 1 is DENIED.
- Plaintiff's Motion in Limine No. 2 is GRANTED.
- Plaintiff's Motion in Limine No. 3 is DENIED.
- Plaintiff's Motion in Limine No. 4 is DEFERRED.
- Plaintiff's Motion in Limine No. 5 is DENIED.
- Defendant's Motion in Limine No. 1 is DENIED.
- Defendant's Motion in Limine No. 2 is DENIED.
- Defendant's Motion in Limine No. 3 is DENIED.
- Defendant's Motion in Limine No. 4 is DENIED.
- Defendant's Motion in Limine No. 5 is GRANTED.

Dated: November 7, 2022


BETH LABSON FREEMAN
United States District Judge